

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES RICHARD DECKER,

Petitioner,

No. CIV-S-03-0799 FCD KJM P

vs.

MIKE KNOWLES, et al.,

Respondent.

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding with counsel with an application for writ of habeas corpus under 28 U.S.C. § 2254. On March 28, 2006, petitioner filed a motion asking that these proceedings be held in abeyance pending exhaustion of state court remedies with respect to a potential new claim. The new claim would be based on petitioner's trial counsel's alleged ineffective assistance by virtue of his failure to call a material witness; petitioner asserts that the information to support this claim was discovered only recently, because trial counsel previously had concealed it. Respondent has not opposed petitioner's motion.

In Rhines v. Weber, 544 U.S. 269, 278 (2005), the Supreme Court recognized the district court's authority to stay a habeas action if a habeas petitioner seeks to exhaust state court remedies with respect to a new, potentially meritorious claim and demonstrates good cause for failure to exhaust earlier. Petitioner's representation that he was unaware of the availability of

1 the material testimony until just recently satisfies the Rhines good cause requirement. Moreover,
2 this court cannot find that petitioner's claim of ineffective assistance of counsel is plainly
3 meritless. A stay is appropriate.

4 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 5 1. Petitioner's March 28, 2006 request for a stay be granted;
- 6 2. This matter be stayed; and
- 7 3. Counsel for petitioner be directed to inform the court as soon as state court
8 remedies are exhausted with respect to the claim identified in petitioner's March 28, 2006
9 motion.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
15 shall be served and filed within ten days after service of the objections. The parties are advised
16 that failure to file objections within the specified time may waive the right to appeal the District
17 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: August 4, 2006.

19
20 
21 _____
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26